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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF SAN DIEGO**

15 BRADLEY LUTAT, on behalf of the State
16 of California, as a private attorney general,

17 Plaintiff,

18 vs.

19 BARRY'S BOOTCAMP, LLC, a California
20 Limited Liability Company; BARRY'S
21 BOOTCAMP SAN DIEGO LLC, a
22 California Limited Liability Company;
23 BARRY'S BAY AREA, LLC, a Limited
24 Liability Company; and Does 1 through 50,
25 inclusive,

26 Defendants.

Case No.: **37-2020-00044771-CU-OE-CTL**

NOTICE OF ENTRY OF JUDGMENT

Hearing Date: January 20, 2023

Hearing Time: 9:00 a.m.

[Hearing scheduled by Order dated September 16, 2022]

Judge: Hon. Eddie C. Sturgeon

Dept: 67

Action Filed: December 7, 2020

Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

2 YOU ARE HEREBY NOTIFIED THAT on January 23, 2023, the Court entered the
3 Final Approval Order and the Judgment in the above entitled action. A true and correct copy of the
4 Final Approval Order and Judgment is attached hereto as Exhibit #1.

5 Respectfully submitted,

6 Dated: January 31, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

8 By: /s/ Kyle Nordrehaug
9 Kyle R. Nordrehaug
Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

3 I, Kyle Nordrehaug, am employed in the County of San Diego, State of California. I am
4 over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La
5 Jolla, California 92037.

6 On January 31, 2023, I served the document(s) described as:

7 **1. NOTICE OF ENTRY OF JUDGMENT**

8
9 X (BY ELECTRONIC SERVICE): I caused each such document above to be e-served through
10 ONE-LEGAL to all parties and to counsel for Defendant at the following e-mail address(es):

11 Ryan C. Bykerk (SBN 274534)
12 Greenberg Traurig, LLP
13 1840 Century Park East, Suite 1900
14 Los Angeles, CA 90067
15 Telephone: (310) 586-7700
16 Facsimile: (310) 586-7800

17 Email: bykerkr@gtlaw.com

18
19 X (ONLINE TO THE LWDA): I caused the above-described document to be delivered to the
20 Labor Workforce Development Agency via online process at the PAGA Filing website in
21 accordance with the procedure imposed by the LWDA.

22
23 X (State): I declare under penalty of perjury under the laws of the State of California that the
24 above is true and correct.

25 Executed on January 31, 2023, at La Jolla, California.

26
27 /s/ Kyle Nordrehaug
28 Kyle Nordrehaug

01/23/2023 at 05:02:00 PM

Clerk of the Superior Court
By Vanessa Bahena, Deputy Clerk

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

BRADLEY LUTAT, an individual, on
behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

BARRY'S BOOTCAMP, LLC, a California
Limited Liability Company; BARRY'S SAN
DIEGO LLC, a California Limited Liability
Company; BARRY'S BAY AREA, LLC, a
Limited Liability Company; and Does 1
through 50, Inclusive,

Defendants.

CASE NO.: **37-2020-00044771-CU-OE-CTL**

**~~PROPOSED~~ FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: January 20, 2023
Hearing Time: 9:00 a.m.

Judge: Hon. Eddie C Sturgeon
Dept.: 67

Action Filed: December 7, 2020
Trial Date: None Set

1 The motion of Plaintiff Bradley Lutat (“Plaintiff”) for an order finally approving the Class
2 Action Settlement Agreement (“Agreement”) with Defendants Barry’s Bootcamp, LLC; Barry’s
3 Bootcamp San Diego, LLC; Barry’s Bay Area, LLC (“Defendants”) attorneys’ fees and costs,
4 service payment, and the fees of the Settlement Administrator duly came on for hearing on
5 January 20, 2023 before the Honorable Eddie C. Sturgeon.

6 **I.**

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

- 10 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 11 2. This Court has jurisdiction over the subject matter of this litigation pending before
12 the California Superior Court for the County of San Diego, and over all Parties to this litigation,
13 including the Class.
- 14 3. Based on a review of the papers submitted by Plaintiff and a review of the
15 applicable law, the Court finds that the Gross Settlement Amount of Seven Hundred Thousand
16 Dollars (\$700,000) and the terms set forth in the Agreement are fair, reasonable, and adequate.
- 17 4. The Court further finds that the Settlement was the result of arm’s length
18 negotiations conducted after Class Counsel had adequately investigated the claims and became
19 familiar with the strengths and weaknesses of those claims. In particular, the amount the
20 Settlement, the significant risks relating to certification, liability, and damages issues, and the
21 assistance of an experienced mediator in the settlement process, among other factors, support the
22 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

23 **Preliminary Approval of the Settlement**

- 24 5. On September 16, 2022, the Court granted preliminary approval of the Settlement.
25 At this same time, the Court approved conditional certification of the Class for settlement
26 purposes only.

27 **Notice to the Class**

1 6. In compliance with the Preliminary Approval Order, the Class Notice was mailed
2 by first class mail to members of the Class at their last known addresses on or about November 10,
3 2022. Mailing of the Class Notice to their last known addresses was the best notice option under
4 the circumstances and was reasonably calculated to communicate actual notice of the litigation
5 and the proposed settlement to the Class. The Class Notice given to the Class Members fully and
6 accurately informed the Class Members of all material elements of the proposed Settlement and of
7 their opportunity to object to or comment thereon or to seek exclusion from the Settlement; was
8 valid, due, and sufficient notice to all Class Members; and complied fully with the laws of the
9 State of California, the United States Constitution, due process and other applicable law. The
10 Class Notice fairly and adequately described the Settlement and provided Class Members adequate
11 instructions and a variety of means to obtain additional information.

12 7. The deadline for opting out of the Class or submitting written objections to the
13 Settlement was December 27, 2022. There was an adequate interval between mailing of the Class
14 Notice and the response deadline to permit Class Members to choose what to do and act on their
15 decision. A full opportunity has been afforded to the Class Members to participate in this hearing,
16 and all Class Members and other persons wishing to be heard have been heard. Class Members
17 also have had a full and fair opportunity to exclude themselves from the proposed Settlement and
18 Class. Accordingly, the Court determines that all Class Members who did not timely and properly
19 submit a request for exclusion are bound by the Settlement and this Final Approval Order and
20 Judgment.

21 **Fairness Of Settlement**

22 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
23 48 Cal.App.4th 1794, 1801 (1996).

24 a. The settlement was reached through arm's-length bargaining between the
25 parties during an all-day mediation before Jeffrey Krivis, a respected and experienced mediator of
26 wage and hour class actions. There has been no collusion between the parties in reaching the
27 proposed settlement.

1 b. Plaintiff's investigation and discovery have been sufficient to allow the
2 Court and counsel to act intelligently.

3 c. Counsel for both parties are experienced in similar employment class action
4 litigation. All counsel recommended approval of the Agreement.

5 d. The percentage of objectors and requests for exclusion is small. No
6 objections were received. No requests for exclusion were received.

7 e. The participation rate was high. 682 Class Members will be mailed a
8 settlement payment, representing 100% of the overall Class.

9 9. The consideration to be given to the Class Members under the terms of the
10 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
11 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
12 Members' claims, given the uncertainties and significant risks of the litigation and the delays
13 which would ensue from continued prosecution of the action.

14 10. The Agreement is approved as fair, adequate and reasonable and in the best
15 interests of the Class Members.

16 **Attorneys' Fees and Costs**

17 11. An award of \$233,333 for attorneys' fees, representing one-third of the Gross
18 Settlement Amount, and \$11,119.90 for litigation costs and expenses, is reasonable, in light of the
19 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
20 achieved by Class Counsel. The requested award has been supported by Class Counsel's lodestar
21 and billing statement.

22 **Class Representative Service Payment**

23 12. The Agreement provides for a Class Representative Service Payment of not more
24 than \$10,000 to the Plaintiff, subject to the Court's approval. The Court finds that a Class
25 Representative Service Payment in the amount of \$10,000 to the Plaintiff is reasonable in light of
26 the risks and burdens undertaken by the Plaintiff in the litigation, for his time and effort in
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28

1 bringing and prosecuting this matter on behalf of the Class, and for his execution of a general
2 release.

3 **Settlement Administration Expenses**

4 13. The Settlement Administrator shall calculate and administer the payment to be
5 made to the Class Members, transmit payment for attorneys' fees and costs to Class Counsel,
6 transmit the Class Representative Service Payment to the Plaintiff, distribute the PAGA Payment,
7 issue any required tax reporting forms, calculate withholdings and perform the other remaining
8 duties set forth in the Agreement. The Settlement Administrator has documented \$13,476.50 in
9 fees and expenses, and this amount is reasonable in light of the work performed by the Settlement
10 Administrator.

11 **PAGA Payment**

12 14. The Agreement provides for a PAGA Payment out of the Gross Settlement
13 Amount of \$25,000, which shall be allocated \$18,750 to the LWDA as the LWDA's 75% share of
14 the settlement of civil penalties paid pursuant to the PAGA and \$6,250 to be distributed to the
15 Aggrieved Employees based on their respective pay periods worked during the PAGA Period
16 (October 1, 2019 through August 12, 2021). The Aggrieved Employees are all individuals who
17 worked for Defendants in California as non-exempt employees at any time during the PAGA
18 Period, which is December 3, 2018 through June 11, 2021. The Court finds this PAGA Payment
19 to be reasonable. All Aggrieved Employees will be sent their share of the PAGA Payment and
20 will be subject to the release of the Released PAGA Claims as set forth below, whether or not they
21 opt out of the Settlement.

22 **II.**

23 **ORDERS**

24 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

25 1. The certification of the Class for the purposes of settlement is confirmed. The
26 Class is defined as follows:

27 All individuals who worked for Defendants in California as non-exempt employees
28 at any time during the Class Period (October 1, 2019 through August 12, 2021).

1 2. All persons who meet the foregoing definition are members of the Class, except for
2 those individuals who filed a valid request for exclusion (“opt out”) from the Class. There were
3 no individuals who requested exclusion.

4 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
5 best interest of the Class.

6 4. Class Counsel are awarded attorneys' fees in the amount of \$233,333 and costs in
7 the amount of \$11,119.90. Class Counsel shall not seek or obtain any other compensation or
8 reimbursement from Defendants, Plaintiff or members of the Class.

9 5. The payment of the Class Representative Service Payment in the amount of
10 \$10,000 to the Plaintiff is approved.

11 6. The payment of \$13,476.50 to the Settlement Administrator for their fees and
12 expenses is approved.

13 7. The PAGA Payment of \$25,000 is approved and shall be allocated in accordance
14 with the Agreement.

15 8. The Agreement and this Settlement are not an admission by Defendants, nor is this
16 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
17 wrongdoing by Defendants or that this Action is appropriate for class treatment (other than for
18 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any
19 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
20 as, or may be used as an admission by or against Defendants of any fault, wrongdoing or liability
21 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or
22 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an
23 admission or concession with regard to the denials or defenses by Defendants. Notwithstanding
24 these restrictions, Defendants may file in the Action or in any other proceeding this Final
25 Approval Order and Judgment, the Agreement, or any other papers and records on file in the
26 Action as evidence of the Settlement to support a defense of res judicata, collateral estoppel,
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1 release, or other theory of claim or issue preclusion or similar defense as to the Released Class
2 Claims and/or the Released PAGA Claims.

3 9. Notice of entry of this Final Approval Order and Judgment shall be given to all
4 Parties by Class Counsel on behalf of Plaintiff and all Class Members. The Final Approval Order
5 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
6 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
7 to individual Class Members.

8 10. If the Agreement does not become final and effective in accordance with the terms
9 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
10 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
11 revert to their respective positions as of before entering into the Agreement, and expressly reserve
12 their respective rights regarding the prosecution and defense of this Action, including all available
13 defenses and affirmative defenses, and arguments that any claim in the Action could not be
14 certified as a class action and/or managed as a representative action.

15
16 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

17 1. Except as set forth in the Agreement and this Final Approval Order and Judgment,
18 Plaintiffs, and all members of the Class, shall take nothing in the Action.

19 2. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
20 jurisdiction to construe, interpret, implement and enforce the Agreement, to hear and resolve any
21 contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute
22 arising from or in connection with the distribution of settlement benefits.

23 3. The Parties are authorized, without further approval from the Court, to agree to and
24 to adopt such amendments, modifications and expansions of the Agreement and all exhibits
25 attached thereto which are consistent with this Final Approval Order and Judgment and as
26 approved by the Court.

1 4. Each party shall bear its own attorneys' fees and costs, except as otherwise
2 provided in the Agreement and in this Final Approval Order and Judgment.

3 5. Upon the Effective Date, Defendants shall receive a release from the Participating
4 Class Members of any and all claims that were pled or could have been pled based on the factual
5 allegations contained in the operative FAC, including claims under the Fair Labor Standards Act,
6 which occurred during the Class Period, and expressly excluding all other claims, including claims
7 for wrongful termination, unemployment insurance, disability, social security, and workers'
8 compensation, and claims outside of the Class Period ("Released Class Claims").

9 6. Upon the Effective Date, Defendant shall receive a release from the State of
10 California of all Released PAGA Claims. "Released PAGA Claims" means the claims for civil
11 penalties under California Labor Code Sections 2698 *et. seq.*, predicated on the applicable
12 California Labor Code violations that were pled or that could have been pled based on the factual
13 allegations contained in the LWDA Notice and/or the operative FAC which occurred during the
14 PAGA Period. The period of the Release Claims shall be for the PAGA Period. The Released
15 PAGA Claims do not include underlying wage and hour claims, claims for wrongful termination,
16 discrimination, unemployment insurance, disability and worker's compensation, and claims
17 outside of the PAGA Period, and do not include any claims that cannot be released as a matter of
18 law. The Released PAGA Claims are released against all Released Parties. The release of the
19 Released PAGA Claims shall be effective, regardless of whether an Aggrieved Employee
20 submitted a request for an exclusion from the Class.

21 7. As of the Effective Date, Plaintiff generally, releases and discharges the Released
22 Parties from all claims arising from their employment by Defendants ("Plaintiff's Released
23 Claims") as set forth fully in the Agreement.

24 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

25
26 Dated: 01/23/2023



27
28 HON. EDDIE C. STURGEON
JUDGE, SUPERIOR COURT OF CALIFORNIA

FINAL APPROVAL ORDER AND JUDGMENT